

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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Federal Communications Commission
Office of the Secretary

In the Matter of)

Amendment of Rules Governing)

Procedures to Be Followed)

When Formal Complaints Are)

Filed Against Common Carriers.)

CC Docket No. 92-26

REPLY COMMENTS OF
THE NORTH AMERICAN TELECOMMUNICATIONS ASSOCIATION

The North American Telecommunications Association ("NATA"), hereby replies to comments submitted in response to the Notice of Proposed Rulemaking released by the Federal Communications Commission ("FCC" or "Commission") in this docket on March 12, 1992.

It is evident that all commenters support the Commission's goal of expediting the formal complaint process. It is also evident that the heart of the problem lies not with how many days a party has to file a pleading, but with how the process works in practice. As NATA and others suggested, increased use of case management techniques, such as status conferences, may be a more effective use of limited Commission resources than efforts to amend existing rules. Holding hearings can also improve the decision-making process by focussing on the facts brought forth and issues to be decided, and increased availability of discovery tools will make more facts available for decision-making at these hearings.

NATA will respond to certain of the other parties' comments on the proposed changes to the formal complaint rules.

NATA has no objection at this time to elimination of the reply to defendant's answer. The Commission should affirm, however, as

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suggested by MCI, that the lack of a reply cannot be deemed an admission of an affirmative defense.¹ Replies to opposing briefs, and responses to oppositions to motions should remain part of the process without restriction. The filing of replies can often help focus arguments and make the ultimate decision-making process easier and more rational.

A number of parties urged the Commission to permit filing a motion for summary judgment after an answer has been filed, allowing time for some discovery which may support a summary judgment motion.² NATA has no objection to such a procedure at this time, assuming that other aspects of the case, such as discovery, do proceed without delay.

NYNEX proposed that discovery be tolled pending a ruling on a motion to dismiss.³ NATA strongly objects to holding a case hostage while a motion to dismiss is pending. Tolling discovery during pendency of a motion to dismiss works only to the advantage of the filing party, and would result in defendants filing a motion to dismiss in every case as a delay tactic. This would only exacerbate the difficulties in obtaining expeditious completion of formal complaint cases. A more appropriate solution would be prompt ruling on preliminary motions such as motions to dismiss so that resources of all parties are not unnecessarily spent should

¹ See Comments of MCI Telecommunications Corporation at 12.

² See, e.g., Comments of Pacific Bell and Nevada Bell at 1-2, Comments of The GTE Telephone Companies at 3.

³ Comments of the NYNEX Telephone Companies at 7.

an issue ultimately be dismissed. During pendency of preliminary motions, discovery should proceed.

As noted in its original comments, NATA has no objection to bifurcation of a complaint into separate liability and damages phases. It should be clear, however, that where the two phases overlap, discovery which relates to both phases will be allowed in the initial liability phase.⁴ In addition, it should be clear that a procedural schedule will be followed in both phases.

Some commenters objected to standardizing a proprietary agreement.⁵ Southwestern Bell alleges that with increased competition, parties will use the complaint process to gain access to sensitive information.⁶ That certain information is competitively sensitive is no reason to preclude its use in a proceeding; it merely means that appropriate precautions should be taken to protect the information from improper use. While the Commission should be flexible in accommodating unique circumstances, a standard agreement goes a long way toward reducing disputes on how sensitive information should be handled. For example, the standard proprietary agreement can easily be drafted to prohibit disclosure of proprietary information to a competitor's marketing personnel.

⁴ See e.g. Comments of MCI Telecommunications Corporation at 19; Comments of the Public Service Commission of the District of Columbia at 4-5.

⁵ See e.g. Comments of Bell Atlantic at 4-5; Comments of AT&T at 4-5; Comments of Southwestern Bell Telephone Company at 3-5.

⁶ Comments of Southwestern Bell Telephone Company at 3.

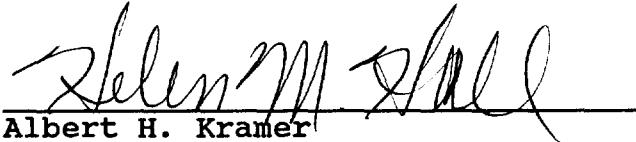
Southwestern Bell proposed immediate dismissal of a complaint if a complainant alleges "high price" but the price is within price cap limits.⁷ Similarly, it suggests immediate dismissal of an overearnings complaint if earnings were shared as required.⁸ While appealing as an apparently easy means of handling certain complaints, these suggestions ignore the fact that the price range, or the thresholds above which earnings are shared with ratepayers, may themselves be inappropriate. The Commission must allow the complaint process to be used to provide a check for establishing price cap or earnings limits.

⁷ Comments of Southwestern Bell Telephone Company at 2.

⁸ Id.

As noted in its initial Comments, use of case management techniques such as status conferences should be increased to improve the overall complaint process. NATA also urges the Commission to hold hearings and to expand discovery options to facilitate decision making and fact finding.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Helen M. Hall", is written over a horizontal line.

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